IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23126 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)
Versus
PRATAPSINH CHATURBHAI ZALA - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/04/2007

ORAL JUDGMENT

1. The petitioner Corporation has, invoking Articles 226 and 227 of the Constitution, called into

question the award and order of the Labour Court, Nadiad in Reference (LCN) No.438 of 2000 whereby the respondent workman is ordered to be paid 50% of the back-wages till the date of his retirement, upon the order dated 15.7.1997 of his dismissal being set aside, even as the workman had crossed the age of superannuation during the pendency of the Reference. The respondent was dismissed from service after a departmental enquiry of which the proceedings were not challenged. Admittedly, the respondent had consistent record of absenteeism and other misconducts and for his last misconduct of remaining absent without leave from 17.3.1997 to 9.4.1997, he was dismissed. The respondent had not participated in the enquiry even as sufficient opportunities were granted to him. Thus, the order of punishment was interfered only on the ground of harshness of punishment and in exercise of powers conferred on the Labour Court under section 11A of the Industrial Disputes Act, 1947 (for short, "the Act").

2. Learned counsel Ms. Jyoti Mehta, appearing for the petitioner, submitted that the facts of the

case did not justify interference by the Labour Court and the impugned order was required to be set aside in the interest of justice as the respondent who was not interested in service, could not be awarded back-wages and the order of dismissal could not have been set aside just for awarding back-wages. Learned counsel Mr M.H. Rathod, appearing for the respondent, submitted that the discretion vested in the Labour Court was duly exercised in view of the severity of punishment for the minor misconduct of absenteeism which did not involve any dishonesty on the part of the respondent. He further submitted that the respondent has submitted medical certificate to show that he was sick at the relevant time. However, he was not in a position to substantiate the defence of sickness and could not even name the disease or illness from which the respondent was suffering.

3. It is well-settled proposition of law that the power and discretion vested in the Labour Court under the provisions of Section 11A of the Act could be exercised only in cases where the punishment is shockingly disproportionate to the misconduct proved

against the workman and where interference with the disciplinary action taken by the employer was justified on the ground of apparent injustice. Even in such cases, the order of dismissal or discharge could be set aside so as to direct reinstatement on such terms and conditions, if any, as the court thinks fit. The Labour Court has to apply its judicial mind to arrive at the conclusion that dismissal was wholly unjustified in the facts of the case and examine whether any lesser punishment in lieu of discharge or dismissal would meet the ends of justice. As held by the Supreme Court in ***Mahindra and Mahindra Ltd. v. N.B.Naravade etc. [AIR 2005 SC 1993],*** the discretion which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot, by way

of sympathy alone, exercise the power under section 11-A of the Act and reduce the punishment.

4. In the case of absenteeism, with a history of similar misconduct in the past, it would obviously be improper and unfair to assume that punishment of dismissal or discharge would be shockingly disproportionate or too harsh because, by his very conduct, the workman has to be inferred to have lost interest in the job. Therefore, the workman who is not serious about attending his duties and consistently commits the misconduct of absenteeism and other misconducts, cannot ordinarily be ordered to be reinstated and, if the order of dismissal were justified, there can be no question of payment of any back-wages. Learned counsel Ms. Mehta also pointed out that the whole list of 66 misconducts reported against the respondent was produced before the Labour Court which was not considered at all by the Labour Court while making the impugned award and the exercise of discretion was perverse to that extent and in that regard.

5. Therefore, having regard to the facts and circumstances of the case and in view of the interference by the Labour Court being wholly unjustified, the petition is required to be allowed and accordingly it is allowed so as to quash the impugned award dated 8.6.2006 of Labour Court, Nadiad in Reference (LCN) No. 438 of 2000. Rule is made absolute accordingly with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp